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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

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6 JOHN V. FERRIS, et al.

7 Plaintiff,

8 v.

9 WYNN RESORTS LIMITED, et al.,

10 Defendants.
11

Case No. 2:18-cv-00479-GMN-CWH

ORDER

12 Presently before the court is plaintiff Jeffrey Larsen's motion for appointment as lead
13 plaintiff and approval of counsel (ECF No. 30), filed on April 31, 2018. Also before the court is
14 plaintiff John V. Ferris and Joann M. Ferris' (the "Ferris plaintiffs") motion for appointment of
15 lead plaintiffs and approval of counsel (ECF No. 31), filed on April 23, 2018. On May 7, 2018,
16 plaintiff Larsen filed a notice of non-opposition (ECF No. 35) to plaintiffs John and Joann's
17 motion. The Ferris plaintiffs then filed notice of Larsen's non-opposition (ECF No. 42) on June
18 5, 2018. This matter was referred to the undersigned judge on October 31, 2018, and the motions
19 are resolved accordingly.

20 **I. BACKGROUND**

21 This matter arises from a federal securities class action by purchasers of Wynn Resorts'
22 securities between February 28, 2014 and January 25, 2018. (Compl. (ECF No. 1).) Plaintiffs
23 claim that defendants made misleading statements and failed to disclose the Chief Executive
24 Officer's alleged sexual misconduct. (*Id.*) As a result, Wynn Resorts' securities traded at an
25 inflated price during the aforementioned period. (*Id.*) Plaintiffs allege that news of the CEO's
26 alleged sexual misconduct caused Wynn Resorts' share to prices decline, resulting in a financial
27 loss to class members. (*Id.*)
28

1 The Ferris plaintiffs now move to be named as lead plaintiffs in this securities class
2 action. (Mot. for Appointment of Counsel (ECF No. 31).) Larsen also moved to be named lead
3 plaintiff, but subsequently filed a notice of non-opposition to the Ferris plaintiffs' motion. (Mot
4 for Appointment of Counsel (ECF No. 30); Non-Opposition to Appointment of Counsel (ECF
5 No. 35).) In light of Larsen's non-opposition, the court will deny his motion (ECF No. 30) as
6 moot.

7 **II. APPOINTMENT OF LEAD PLAINTIFF**

8 The Private Securities Litigation Reform Act (the "PSLRA") establishes the procedure for
9 the appointment of lead plaintiffs in class actions under the Securities and Exchange Act of 1934.
10 15 U.S.C. § 78u-4(a)(1) & (a)(3)(b)(ii). First, the plaintiff who initiated the action must publish
11 notice to the purported class members, informing them of their right to file a motion for
12 appointment of lead plaintiff. § 78u-4(a)(3)(A). Second, within 60 days of the notice publication,
13 a member of the proposed class may move for the appointment of lead plaintiff. § 78u-
14 4(a)(3)(i)(II).

15 Within 90 days after the publication of notice, the court shall consider any motion from a
16 purported class member and shall appoint as lead plaintiff a member of the purported class that
17 the court deems capable of adequately representing the class. § 78u-4(a)(3)(A)(B). The court
18 must next determine the most adequate plaintiff. The PSLRA provides that:

19 [T] shall adopt a presumption that the most adequate plaintiff in any private action
20 arising under this chapter is the person or group of persons that—

21 (aa) has either filed the complaint or made a motion in response to a notice under
22 subparagraph (A)(i);

23 (bb) in the determination of the court, has the largest financial interest in the relief
24 sought by the class; and

25 (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil
26 Procedure.

26 § 78u-4(a)(3)(B)(iii); *see also In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002) (the most
27 capable plaintiff is the one with the greatest financial stake in the outcome of the case and meets
28 the requirements of Rule 23). The presumption may be rebutted upon proof that the

1 “presumptively most adequate plaintiff . . . will not fairly or adequately protect the interests of the
2 class; or is subject to unique defenses that render such plaintiff incapable of adequately
3 representing the class.” § 78u-4(a)(3)(B)(iii)(II).

4 Here, the Ferris plaintiffs are the presumed most adequate plaintiff as they have filed this
5 motion in response to the timely notice filed in the Globe Newswire on February, 20, 2018. (Mot.
6 for Appointment of Counsel (ECF No. 31) Ex. A.) Further, the Ferris plaintiffs have the largest
7 financial interest, due to the purchase of 2,000 Wynn Resorts’ securities. (*Id.* at Ex. B.) The
8 court will now address whether the Ferris plaintiffs satisfy Rule 23(a) of the Federal Rules of
9 Civil Procedure.

10 Under Rule 23(a), a party may serve as a class representative only if:

- 11 (1) the class is so numerous that joinder of all members is impracticable;
12 (2) there are questions of law or fact common to the class;
13 (3) the claims or defenses of the representative parties are typical of the claims or
14 defenses of the class; and
(4) the representative parties will fairly and adequately protect the interests of the
class.

15 The typicality and adequacy factors are relevant to the selection of the lead plaintiff, whereas a
16 determination of the numerosity factors are deferred until the lead plaintiff moves for class
17 certification. *In re Cavanaugh*, 306 F.3d at 730.

18 **A. Typicality**

19 Typicality is determined by “whether other members have the same or similar injury,
20 whether the action is based on conduct which is not unique to the named plaintiffs, and whether
21 other class members have been injured by the same course of conduct.” *Hanon v. Dataproducts*
22 *Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). Claims need not be identical, they must only be
23 reasonably “co-extensive” with those of other class members. *Hanlon v. Chrysler Corp.*, 150
24 F.3d 1011, 1020 (9th Cir. 1998).

25 Here, the Ferris plaintiffs have demonstrated that its claims arise from the same facts of all
26 other class members. Specifically, that defendants made misleading statements and failed to
27 disclose the CEO’s alleged sexual misconduct, causing shares to trade at an inflated price. As a
28 result, the Ferris plaintiffs and the absent class members suffered a financial loss when Wynn

1 Resorts' share prices fell upon the news of the sexual misconduct allegations. Thus, the Ferris
2 plaintiffs share a similar injury with other class plaintiffs.

3 **B. Adequacy**

4 Class representatives must "fairly and adequately protect the interests of the class." Fed.
5 R. Civ. P. 23(a)(4). The court finds adequacy by assessing (1) whether the interests with the
6 class representatives align with the absent class members and (2) whether the lead plaintiffs will
7 vigorously prosecute the action on behalf of the class. *See id.*

8 Here, the Ferris plaintiffs have demonstrated that they are adequate representatives of the
9 class. The Ferris plaintiffs' interests are the same as the other class members, as they seek
10 damages for a financial loss due to defendants' alleged misrepresentations. Further, the Ferris
11 plaintiffs' alleged financial loss demonstrates their significant interest in the success of the
12 action.

13 Therefore, the court finds that the Ferris plaintiffs have satisfied the typicality and
14 adequacy factors of Rule 23(a). Given that no other class member has moved to rebut the
15 presumption that the Ferris plaintiffs are the most adequate to represent the class, the court
16 will grant the motion.

17 **III. APPOINTMENT OF LEAD COUNSEL**

18 Plaintiff also moves to select Pomerantz LLP as lead counsel, and Muehlbauer Law
19 Office, LTD., as liaison counsel. Under the PSLRA, once the court selects a lead plaintiff, that
20 plaintiff "shall, subject to the approval of the court, select and retain counsel to represent the
21 class." § 78u-4(a)(3)(B)(v). The court may disturb the plaintiff's choice of counsel if it is
22 necessary to "protect the interests of the class." 15 U.S.C. § 78u-(a)(3)(B)(iii)(II)(aa).

23 The court has reviewed the Ferris plaintiffs' selected lead counsel, Pomerantz LLP, and
24 their choice for liaison counsel, Muehlbauer Law Office, LTD., and finds that the firms are
25 capable of serving in their respective roles. Both firms have extensive experience in securities
26 litigation and class actions, and have demonstrated familiarity with the applicable law. (Mot. for
27 Appointment of Counsel (ECF No. 31) Ex. D-E.) Therefore, the court will grant the Ferris
28 plaintiffs' motion for selection of counsel.

1 IT IS THEREFORE ORDERED that plaintiff Jeffrey Larsen's motion for appointment as
2 lead plaintiff and approval of counsel (ECF No. 30) is DENIED as moot.

3 IT IS FURTHER ORDERED that plaintiff John V. Ferris and Joann M. Ferris' motion for
4 appointment of lead plaintiffs and approval of counsel (ECF No. 31) is GRANTED.

5 DATED: December 4, 2018

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9 C.W. HOFFMAN, JR.
10 UNITED STATES MAGISTRATE JUDGE
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